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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

THE PEOPLE,

Plaintiff and Respondent,

v.

RICARDO TORRES VELEZ,

Defendant and Appellant.

B188376

(Los Angeles County  
Super. Ct. No. KA072076)

APPEAL from a judgment of the Superior Court of Los Angeles County.

Bruce F. Marr, Judge. Affirmed as modified.

David M. Thompson, under appointment by the Court of Appeal, for Defendant and Appellant.

Bill Lockyer, Attorney General, Robert R. Anderson, Chief Assistant Attorney General, Pamela C. Hamanaka, Senior Assistant Attorney General, Jaime L. Fuster and Lance E. Winters, Deputy Attorneys General, for Plaintiff and Respondent.

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## INTRODUCTION

Appellant Ricardo Torres Velez challenges his burglary and theft convictions on the ground the trial court erred by denying his *Romero*<sup>1</sup> motion. We conclude the trial court did not abuse its discretion.

## BACKGROUND AND PROCEDURAL HISTORY

Appellant repeatedly entered the home and garage of Fay Weber while she was out of town. He stole checkbooks, appliances, clothing, jewelry, silverware, food, landscaping equipment, and other items. The car in which appellant was detained was stolen from a rental car agency. At the time of his detention, appellant also had possession of a checkbook and credit cards belonging to Laurel Ladner, whose purse had been stolen from her car.

A jury convicted appellant of two counts of first degree burglary, one count of second degree burglary, grand theft of an automobile, and petty theft with a prior. The court found appellant had suffered two prior serious or violent felony convictions. Appellant was sentenced to 100 years to life in prison.

## DISCUSSION

The trial court sentenced appellant to one concurrent and four consecutive terms of 25 years to life under the Three Strikes law after denying his motion to vacate one or both of his prior serious or violent felony convictions. Appellant contends the court abused its discretion by denying the motion with respect to one of the convictions. He argues his strike priors occurred on a single occasion, were remote, and were not as serious as they sounded on paper because he was initially granted probation; the current offenses were not violent and were motivated by appellant's need to provide for his family; some evidence indicated he was a drug abuser; and he had only one other felony conviction apart from his strike priors.

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<sup>1</sup> *People v. Superior Court (Romero)* (1996) 13 Cal.4th 497.

A trial court has discretion under the Three Strikes law to dismiss or vacate prior conviction allegations or findings in the furtherance of justice. (Pen. Code, § 1385, subd. (a); *People v. Superior Court (Romero)*, *supra*, 13 Cal.4th at pp. 529-530.) In exercising this power, the trial court must consider the defendant's background, his constitutional rights, the nature of the current offense, and the interests of society. (*Id.* at pp. 530-531.) The court should not dismiss or vacate a "strike" unless it concludes that the defendant may be deemed to be outside the anti-recidivist "spirit" of the Three Strikes law. (*People v. Williams* (1998) 17 Cal.4th 148, 161.)

The trial court's decision is reviewed deferentially. (*People v. Carmony* (2004) 33 Cal.4th 367, 373-374.) The court does not abuse its discretion unless its decision is so irrational or arbitrary that no reasonable person could agree with it. (*Id.* at p. 377.) The Three Strikes law "not only establishes a sentencing norm, it carefully circumscribes the trial court's power to depart from this norm and requires the court to explicitly justify its decision to do so. In doing so, the law creates a strong presumption that any sentence that conforms to these sentencing norms is both rational and proper. [¶] In light of this presumption, a trial court will only abuse its discretion in failing to strike a prior felony conviction allegation in limited circumstances," such as where the court was unaware of its discretion or considered impermissible factors. (*Id.* at p. 378.) "Where the record is silent . . . or '[w]here the record demonstrates that the trial court balanced the relevant facts and reached an impartial decision in conformity with the spirit of the law, we shall affirm the trial court's ruling, even if we might have ruled differently in the first instance.' [Citation.] Because the circumstances must be 'extraordinary . . . by which a career criminal can be deemed to fall outside the spirit of the very scheme within which he squarely falls once he commits a strike as part of a long and continuous criminal record, the continuation of which the law was meant to attack' [citation], the circumstances where no reasonable people could disagree that the criminal falls outside the spirit of the three strikes scheme must be even more extraordinary." (*Ibid.*)

A review of the record reveals that appellant had three misdemeanor convictions in 1989: under the influence of a controlled substance, forgery, and failure to appear as promised for a traffic violation. He received jail terms for the first two offenses. In 1990, he was again convicted of being under the influence of a controlled substance and again received a jail sentence. In 1991, he was convicted of three felonies, two of which were alleged as strikes in the present case: attempted oral copulation, forcible sexual penetration, and sexual battery by restraint. According to the opinion on appeal from those convictions, the convictions stemmed from a violent rape, although appellant claimed the conduct was consensual. He was also charged with rape, but pled no contest to the three remaining charges pursuant to a plea agreement. He was granted probation on conditions including service of one year in jail, but his probation was subsequently revoked and he was sentenced to eight years in prison. Following an appellate reversal and remand for resentencing, he was sentenced to six years in prison. While on probation in 1994, appellant was convicted of driving with a suspended or revoked license, a misdemeanor. In 2001, he was deported. In 2005, he was convicted of another felony: knowingly presenting a false insurance claim, for which he was sentenced to two years in prison.

The trial court explained its denial of appellant's *Romero* motion as follows:

“Defendant doesn't appear to have led a crime-free life. Certainly the priors are not that old. I can't find interest of justice in this particular matter. Interesting phraseology on page 6 and 7 of the defense moving papers. It's a good question, as to how long the state maintains an interest in keeping the defendants public charge [*sic*] and after what period of incarceration he is no longer likely to offend again. [¶] Considering his age, it's going to be quite a while before he reaches the level where he's not likely to offend again. The behavior in our case indicates he certainly is not above taking a target of opportunity. Number of different, separate cases and seeking a profit from them.”

This record clearly demonstrates that the trial court considered all of the matters upon which appellant relies and balanced the relevant facts. It considered facts pertaining to appellant's background and prior crimes, including the purported remoteness of his prior strikes, their commission on a single occasion, the remainder of appellant's record, and the opportunistic nature of the current offense. The court also considered society's interest in protecting itself from appellant's persistent criminal conduct. Nothing indicates the court's decision was not impartial or that it considered impermissible factors. Accordingly, the court did not abuse the discretion entrusted to it in ruling upon a *Romero* motion. Although appellant's sentence may be extremely harsh, this case does not present the "even more extraordinary" circumstances in which all reasonable people would agree appellant fell outside the anti-recidivist spirit of the Three Strikes law.

Appellant argues the trial court indicated it erroneously believed appellant had been convicted of rape. The court mentioned rape as a type of conduct, not a conviction, in response to defense counsel's argument that appellant's strike priors were "one continuous sexual activity." In that regard, the appellate opinion in the case giving rise to the strike convictions stated that appellant raped the victim. The trial court had numerous documents before it stating the identity of appellant's three convictions in that case, including two abstracts of judgment, the appellate opinion, the People's sentencing memorandum, and a fingerprint card in appellant's prison package. The court's single reference to a rape does not indicate it was confused about appellant's priors.

Respondent correctly notes that the trial court imposed an unauthorized sentence by directing that the Penal Code section 667, subdivision (a)(1) prior serious felony enhancement for count 2 run concurrently. The statute expressly requires that the enhancement run consecutively to the term for the offense. (Pen. Code, § 667, subd. (a)(1).) Accordingly, we modify the judgment.

### **DISPOSITION**

The judgment is modified to reflect a consecutive Penal Code section 667, subdivision (a)(1) prior serious felony enhancement for count 2. In all other respects, the judgment is affirmed.

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BOLAND, J.

We concur:

COOPER, P.J.

RUBIN, J.